

COUNCIL CODE OF CONDUCT - LESSONS LEARNED

RECOMMENDATION

That Administration return to the Code of Conduct Sub-Committee with recommended amendments to Bylaw 18483 - Council Code of Conduct, for the purpose of adding the Sanction Hearing Procedures as outlined in Attachment 1 of the September 29, 2022, Office of the City Manager report OCM00775.

Requested Council Action		Decision required.	
ConnectEdmonton's Guiding Principle		ConnectEdmonton Strategic Goals	
CONNECTED This unifies our work as we achieve our strategic goals.		Healthy City	
City Plan Values	LIVE, THRIVE.		
City Plan Big City Move(s)	Inclusive and compassionate	Relationship to Council's Strategic Priorities	Conditions for service success
Corporate Business Plan	Serving Edmontonians		
Council Policy, Program or Project Relationships	<ul style="list-style-type: none">Bylaw 18483 - Council Code of ConductBylaw 18567 - Integrity Commissioner Bylaw		
Related Council Discussions	August 16/18, 2021, City Council meeting		

Previous Council/Committee Action

At the August 16/18, 2021, City Council meeting, the following motion passed:

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That the Integrity Commissioner/Ethics Advisor, Legal Services and the City Clerk return to Council Services Committee with a report(s) about lessons learned regarding the Council Code of Conduct and the Sanction Hearing Process including an evaluation of options, including but not limited to delegating the sanctioning authority to the Integrity Commissioner, subject to a right of appeal to Council if the respondent Councillor feels the sanction is inappropriate.

Executive Summary

- Administration is recommending incorporating the Sanction process, approved at the January 20, 2020, City Council meeting, into the Council Code of Conduct Bylaw.
- During the discussion at the Council Code of Conduct Sub-Committee meeting, additional changes to the Sanction Process may be identified.
- If approved by Committee, Administration will return with updates to the bylaw.

REPORT

Bylaw 18483- Council Code of Conduct was passed by City Council in June 2018. This bylaw contains the Code of Conduct which governs City Council. Since that time, the Bylaw and the Code of Conduct itself has been amended on several occasions to clarify certain matters. In September, 2018, City Council passed Bylaw 18567- Integrity Commissioner which established the Integrity Commissioner as a designated officer which investigates and decides Code of Conduct complaints. These two bylaws operate together since Bylaw 18483 refers complaints to the Integrity Commissioner. Currently, the Office of the Integrity Commissioner is involved in the investigation of complaints, will give recommendations on sanctions, and will provide advice on amendments to the content of the Code of Conduct.

In addition to the Integrity Commissioner, City Council hired an Ethics Advisor in September 2018. The Ethics Advisor provides ethical advice about the Code of Conduct to City Council as a whole, including advice on the interpretation of the Code of Conduct. In addition, the Ethics Advisor may provide legal advice to individual Councillors strictly on matters relating to the Code of Conduct and Code of Conduct investigations. This dual role where the ethics advisor provides both ethical and legal advice appears to be unique to Edmonton. The Ethics Advisor does not provide legal advice on matters that impact the City as a whole, or outside of the Code of Conduct.

These roles can be contrasted with the current role of Legal Services in Code of Conduct matters. Legal Services provides legal advice to City Council on the procedures surrounding the Code of Conduct, and approves and finalizes the bylaw, including providing advice on the specific wording to adopt in the bylaw and the code of conduct itself. Legal Services also provides legal advice to City Council to ensure that the sanction hearing process is fair. Legal Services does not have a role in the investigation or the enforcement of the Code of Conduct, or in the specific content covered in the Code of Conduct (other than assisting in drafting).

The Office of the City Clerk provides support to the Office of the Integrity Commissioner, manages the contracts for both the Ethics Advisor and Integrity Commissioners, prepares materials including agendas for Sanction Hearings and is responsible for ensuring all correct

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procedural processes are followed relating to Code of Conduct proceedings especially those involving Edmonton City Council.

Lessons Learned/Outstanding Issues

Legal Services and the Office of the City Clerk have identified the following outstanding issues that may require further discussion or action.

Sanction Hearing Procedures

Under the current system established by Bylaw 18483, the Integrity Commissioner determines whether there was a breach of the Code of Conduct and provides a recommended sanction. City Council must then determine what sanction will be adopted, if any, and may take into account the recommendation of the Integrity Commissioner. Given that some sanctions can be significant and could create reputational issues and impact future chances of election or other job prospects, some form of fair hearing process must be adopted to ensure a fair process. Bylaw 18483 did not establish any form of procedures for sanction hearings.

At the January 20, 2020, City Council meeting, Council, by motion, adopted a set of hearing procedures for sanction hearings (Attachment 1). These procedures have been used for each of the sanction hearings that have taken place. However, these procedures have not been adopted into the bylaw and there are small inconsistencies between the Bylaw and approved process related to privacy that requires clarification.

For the sake of both simplicity and transparency, Bylaw 18483 should be amended to adopt the procedures in Attachment 1, or other similar procedures. Legal Services recommends this action if sanction hearings are going to continue in their current form.

Privacy of Reports of the Integrity Commissioner

Bylaw 18483 indicates the following as it relates to the privacy of reports from the Integrity Commissioner.

Reports to Council from the Integrity Commissioner will be discussed in private if permitted by the *Municipal Government Act (subject to the Freedom of Information and Protection of Privacy Act)*.

Once Council has received and considered the Integrity Commissioner's report, it will be reviewed in accordance with the Freedom of Information and Protection of Privacy Act and will be posted, to the extent possible, on the City's website.

The provisions of the *Freedom of Information and Protection of Privacy Act*, RSA 2000 Chap F-25 (FOIPPA), would need to be analyzed for each individual report to determine whether a report or portions of a report should be kept private to protect some aspects of confidentiality. However, the City Clerk must make this determination when publishing the agenda prior to City Council being able to consider the confidentiality of a report to determine whether the report will be dealt with in public or in private. While Bylaw 18483 does not include guidance how the City

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Clerk or City Administration should deal with this individual evaluation, the City Clerk has used the FOIPP Act in making a determination along with the Council Code of Conduct which states "Council desires to demonstrate and promote the principles of integrity, accountability, transparency, and respect". To date, all Sanction Hearings have been conducted in public and related materials have been provided during the public portion of the agenda.

Both Legal Services and the Office of the City Clerk agree that an appropriate bylaw amendment should be brought forward to address the inconsistency between the bylaw and sanction hearing process to clarify that the default of reports from the Integrity Commissioner will be the reports are in public, subject to the City Clerk's review of the *Freedom of Information and Protection of Privacy Act*, RSA 2000 Chap F-25 (FOIPP Act).

Role of City Council in Determining Sanction

Currently, Bylaw 18483 provides that City Council determines an appropriate sanction when the Integrity Commissioner finds a breach of the Code of Conduct. City Council may consider the recommendation from the Integrity Commissioner but are in no way bound by the recommendation.

Given the highly public nature of sanctions issues against members of Council, and the potential of serious sanctions being applied, the sanction hearing needs to be conducted in a way that is fair both to the Councillor under investigation as well as to the City as a whole. The current processes adopted by City Council ensure fairness in the process, but puts Councillors sitting on a sanction hearing and ruling on the actions of a fellow Councillor, into an awkward position that is different from their everyday role as a Councillor. This may be even more confusing and awkward if the Ethics Advisor is representing the Councillor that has been found guilty of a breach.

If changes to the current process are desired, Attachment 2 outlines a number of options which change the role of City Council in this process. The Attachment provides strengths, weaknesses, and other considerations that should be considered in determining the desired option.

Each of these options would require amendments to Bylaw 18483. Of these options, the best option may be Option 4 which would provide the Integrity Commissioner with the power to decide the sanction, and the impacted Councillor could then appeal that sanction to City Council or a Council Committee. This requires minimal change to the process, and would ensure that City Council would only need to conduct a sanction hearing when there is a sanction that is serious enough that an impacted Councillor wants to appeal that sanction.

Legal Implications

Section 146.1 of the *Municipal Government Act*, RSA 2000 Chap M-26, requires a council to have a code of conduct. The Code of Conduct for Elected Officials Regulation AR 2000/2017 provides various requirements for the code of conduct. However, much of the process and procedures surrounding how a code of conduct complaint will be handled, including the sanction procedure, are to be determined by each individual municipality.

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COMMUNITY INSIGHT

As the Code of Conduct procedures and sanction appeal process are a quasi-judicial process in control of City Council, additional community insight was not done.

GBA+

GBA+ was not conducted for this report as the code of conduct processes and procedures are a quasi-judicial process which is entirely in control of City Council.

ATTACHMENTS

1. Code of Conduct Procedures approved by City Council - January 20, 2020
2. Options for Changes to the Sanction Hearing Process